

Date: November 10th, 2015

To: The Honorable Mayor and City Council of the City of North Miami

From: Tanya Wilson-Séjour, AICP, Community Planning & Development Director

Re: Text Amendment to Article 3, Division 6, entitled "Variances Heard by the Board of Adjustment," specifically at Section 3-604, entitled "Administrative Variances", and to Article 3, Division 7, entitled "Appeals", specifically at Section 3-702 entitled "Administrative Appeals"

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 6, ENTITLED "VARIANCES HEARD BY BOARD OF ADJUSTMENT," SPECIFICALLY AT SECTION 3-604 ENTITLED "ADMINISTRATIVE VARIANCES", AND AMENDING DIVISION 7, ENTITLED "APPEALS", SPECIFICALLY AT SECTION 3-702 ENTITLED "ADMINISTRATIVE APPEALS" TO EXTEND THE TIME REQUIRED FOR AN AGGRIEVED PARTY TO FILE A NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT FROM THE CURRENT TEN (10) DAYS TO THIRTY (30) DAYS, AND TO SHIFT THE COST OF SUCH AN APPEAL TO THE OWNER OF THE PROPERTY SEEKING THE BENEFITS DERIVED BY THE ISSUANCE OF AN ADMINISTRATIVE VARIANCE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

RECOMMENDATION

That the Planning Commission recommend adoption of the proposed ordinance to amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations" (LDRs) by amending the texts of Article, Division 6, entitled "Variances Heard by Board of Adjustment," specifically at Section 3-604 entitled "Administrative Variances", to repeal and reword Subparagraph (C) to provide for signed consent of neighboring property owners, as well as the texts of Article 3, Division 7, entitled "Appeals", specifically at Section 3-702 entitled "Administrative Appeals" to extend the time required for an aggrieved party to file a notice of appeal to the Board of Adjustment (BOA) from the current ten (10) days to thirty (30) days, and forward said ordinance to City Council for final consideration.

BACKGROUND

Sponsored by Councilman Scott Galvin, this item involves certain text amendments to the City's Land Development Regulations (LDRs) in order to assuage the displeasure of a group of constituents with the administrative variance process set forth therein. The chief complaint of these constituents was that, as currently written, the administrative variance process set forth in the LDRs does not give an aggrieved party sufficient time for an to file a notice of appeal to the BOA following the approval of an administrative variance application by City staff. These residents also took issue with the fee charged by the City administration to file said notice, arguing that the property owner who stands to benefit from the approval and issuance of the administrative variance shall bear the full cost of the appeal.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission initially reviewed this item at its July 7, 2015 public hearing, which was attended by Chair Seifried, Vice-Chair Ernst along with Commissioners Each, James, Jeanty and Pechon. The majority of the Commissioners concurred that the proposed appeal period extension from ten (10) days to thirty (30) days was evidently appropriate, and felt that it would be eminently unfair and unreasonable to shift the cost of filing a notice of appeal to the Applicant, in the event an aggrieved party so chooses. Before tabling the item, the Commission voted to direct staff to remove the problematic clause and reword the amendment in such a way that the fee or cost to file a notice of appeal does not represent a deterrent to an aggrieved party, which still must bear such cost. The motion to table the item passed 5-1 by roll call vote.

With that directive in mind, staff looked at how other neighboring municipalities address citizen's appeals to administrative decisions in their Zoning Code and further recommended that Article 3, Division 6, Section 3-604(C), as currently written in the LDRs be stricken/deleted and replaced with a new provision, which would give neighboring property owners advanced notices to ensure that they are fully apprised of the nature and potential impacts of any administrative application even before staff renders a decision to either approve, deny, or approve said application with conditions.

The amended staff recommendation and accompanying ordinance were reviewed by the Planning Commission at its October 6th, 2015 public meeting, with Chairman Seifried, Vice-Chairman Ernst along with Commissioners Each, James, Jeanty, and Pechon in attendance. After a relatively short discussion and public hearing on the item, Commissioner Each made a motion to recommend adoption of the ordinance as revised by staff and to forward same to the Mayor and City Council for final consideration. Seconded by Vice-Chair Ernst, the motion passed 6-0 by roll call vote.

ANALYSIS

Article 3, Section 3-1004 of the City's LDRs requires that all text amendments to the LDRs must meet the following minimum criteria.

1. Promotes the public health, safety and welfare;

The proposed text amendment intends to amend the administrative variance process, specifically as it relates to the insufficient time allowed for an aggrieved person to file an appeal to the BOA. This amendment will not be deleterious to the public health, safety and welfare of the residents.

2. Does not permit uses the Comprehensive Land Use Plan prohibits in the area affected by the zoning map change or text amendment;

The proposed text amendment seeks to extend the appeal period within which an aggrieved party may file a notice of appeal to the BOA following the granting of an administrative variance by City staff from the current ten (10) days to thirty (30) days to allow a reasonable and sufficient appeal period. Accordingly, the amendment will only revise the administrative variance process in the LDRs and will not allow any use, which is otherwise prohibited in the Comprehensive Land Use Plan.

3. Does not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property;

The proposed text amendment neither changes the residential land use map designations of the affected property nor modifies the uses or intensities of the developments authorized in the affected FLUE designation.

4. Will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the Comprehensive Land Use Plan;

The proposed text amendment only affects the criteria regulating the administrative variance process. As such, no decline in the level of service for public services in the affected districts will occur.

5. Does not directly conflict with any goal, objective or policy of the Comprehensive Land Use Plan; and

The proposed text amendment to extend the appeal period of an administrative variance by City staff will not conflict with any of the goals, policies and objectives of the City's Comprehensive Plan.

6. The proposed amendment furthers the orderly development of the City of North Miami.

The proposed text amendment seeks to allow a reasonable and sufficient time period in which an aggrieved party may appeal an administrative variance approval. In so doing, this amendment will further the orderly development of the City in that it will provide for substantially the same patterns of site development as the underlying regulations. Furthermore, it upholds the democratic values of the American system of governance and favors a participative and inclusionary approach to the City's land use decision-making process. More specifically, this amendment will ensure that necessary safeguards are set forth in the LDRs, which unequivocally promote due process so as to not negate the right of any adjacent property owner that may be aggrieved by an administrative variance approval to be adequately notified of said decision and, therefore, afford said aggrieved property owner a reasonable opportunity to be heard by the BOA.

The purpose and intent of Article 3, Division 6, Section 3-604 is to provide a procedure for property owners to obtain minor administrative variances pertaining to (1) setbacks requirements for structures and driveways in single-family, duplex, triplex or townhouse project, (2) docks, (3) carport structures within the required front and side setbacks, (3) parking regulations for the first restaurant in a shopping center, and (4) to the parking or storage of recreational vehicles. These standards not only provide for substantially the same patterns of site development as the underlying regulations, but also give staff the authority to, by administrative decision, approve, approve with conditions, or deny applications for the above-listed administrative variances.

Clearly, the proposed extension of the appeal period will ensure that a neighboring property owner has sufficient time to be adequately notified of an administrative variance approval, and, if aggrieved, to file a timely appeal. Nevertheless, staff believes that challenges to administrative decisions are likely to be avoided with advanced notices to ensure that neighboring property owners are fully apprised of the nature and potential impacts of any administrative application before staff renders its decision. As such, staff further recommends that Article 3, Division 6, Section 3-604(C), which now reads as follows, "The decision shall be transmitted by regular mail in writing to the adjacent property owners within five (5) working days of the decision being rendered," be stricken/deleted and replaced with the following provisions:

- C. Applications, and signed consent of neighboring property owners, mailed notices.

1. The applicant must file a request to the Community Planning and Development Department in a form approved by staff containing all the information necessary for staff to make an administrative decision, which shall include, but is not limited to, identification of the specific provisions of this chapter from which a administrative variance is sought; the nature and extent of the variance; and the grounds relied upon to justify the approval of the variance, pursuant to subsection (B).
2. Such application shall be accompanied by the required submittal documents and fee as determined by staff, which may include, but shall not be limited to, one of the following:
 - a. *Signed consent of neighboring property owners.*
 - 1) The signed consent of all contiguous property owners, including those located across the street from the subject site, shall be submitted by the applicant on a form prescribed by the administrative official, and on the site plan submitted for consideration.
 - 2) Said consent shall not be required when a separating public right-of-way measures 70 feet or greater, nor shall consent be required when a body of water completely separates the subject parcel from another parcel.
 - 3) If the applicant for an administrative variance is unable to obtain either the signed consent or objection of a neighboring property owner, the signature of that owner shall not be required if the applicant demonstrates a good faith effort to comply with the requirements stated herein.
 - b. *Mailed notices.* The applicant shall provide written mailed notice of the request for administrative variance or waiver to the abutting property owners. Such notice shall be deemed sufficient if it accurately describes the adjustment requested, if it informs the abutting property owners of the consequences of a failure to respond within a specified time, and if such notice is sent first class mail, return receipt requested, to the property owners of record, as reflected on the county property appraiser's tax roll, as updated from time to time; and the applicant for the administrative variance shall present proof acceptable to staff that one of the following two events has occurred:

- 1) After 30 days from receipt of notice, as indicated on the return receipt, the neighboring property owner has failed to respond; or
- 2) The United States Postal Service has returned the notice as undeliverable.

CONCLUSION

Based on the foregoing, staff believes that the proposed text amendment, as revised, has met the criteria set forth in Article 3, Section 3-1004 of the City's LDRs and conforms to the future land use goals, objectives and policies identified in the City's adopted Comprehensive Plan. Therefore staff **requests that the Mayor and City Council adopt the proposed ordinance amending Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations" (LDRs) by amending the texts of Article, Division 6, entitled "Variances Heard by Board of Adjustment," specifically at Section 3-604 entitled "Administrative Variances", to repeal and reword Subparagraph (C) to provide for signed consent of neighboring property owners, as well as the texts of Article 3, Division 7, entitled "Appeals", specifically at Section 3-702 entitled "Administrative Appeals" to extend the time required for an aggrieved party to file a notice of appeal to the BOA from the current ten (10) days to thirty (30) days.**

TWS/nl

Attachments: 1. Proposed Ordinance
2. Newspaper Advertisement

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 6, ENTITLED "VARIANCES HEARD BY BOARD OF ADJUSTMENT," SPECIFICALLY AT SECTION 3-604 ENTITLED "ADMINISTRATIVE VARIANCES", AND AMENDING DIVISION 7, ENTITLED "APPEALS", SPECIFICALLY AT SECTION 3-702 ENTITLED "ADMINISTRATIVE APPEALS" TO MODIFY THE REQUIREMENTS FOR OBTAINING AN ADMINISTRATIVE VARIANCE AND EXTEND THE TIME REQUIRED FOR AN AGGRIEVED PARTY TO FILE A NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT FROM THE CURRENT TEN (10) DAYS TO THIRTY (30) DAYS; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, on April 28, 2009, the Mayor and City Council adopted the City of North Miami ("City") Land Development Regulations under Chapter 29, City Code of Ordinances ("LDRs"); and

WHEREAS, applicable provisions of the LDRs are calculated to protect and regulate residential and commercial uses, as reflected in the various residential and commercial zoning districts within the City, and are consistently used to implement the intent of the City Comprehensive Plan ("Comprehensive Plan"); and

WHEREAS, the LDRs also emphasize dwellings to be the principle use of residential properties, in furtherance of promoting peace and good order, safe vehicular traffic patterns, improving the aesthetic beauty of the community and hence, preserving the value of the all residential properties within the City; and

WHEREAS, City administration may grant an administrative variance for reasonable deviations from the literal terms of the LDRs, due to practical difficulties or unnecessary and undue hardships, so that the spirit of City regulations are observed, public safety and welfare secured, and substantial justice is done; and

WHEREAS, a number of complaints have reached the City administration relating to the administrative variance process, specifically as it relates to the insufficient time allowed for an aggrieved person to file an appeal with the City Board of Adjustment and the cost charged by the City for such an appeal; and

WHEREAS, a just and equitable solution lies in ensuring adjacent property owners with sufficient notice of a request for an Administrative Variance and extending the time allowed to file an appeal from the current ten (10) days to thirty (30) days; and

WHEREAS, City administration is desirous of amending Section 3-604 and Section 3-702, LDRs, to allow a reasonable time period in which to file an appeal; and

WHEREAS, the Planning Commission, after a duly noticed public hearing held on October 6, 2015, recommended approval to the Mayor and City Council by finding that the proposed amendments: 1) promote the public health, safety and welfare, 2) do not permit uses the comprehensive land use plan prohibits in the area affected by the text amendment, 3) do not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property, 4) will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the comprehensive land use plan, 4) do not directly conflict with an goal, objective or policy of the comprehensive land use plan, and 5) the proposed amendments further the orderly development of the City; and

WHEREAS, the Mayor and City Council find the proposed amendments strike an equitable balance between the rights of a property owner requesting an administrative variance with the rights of adjacent property owners who may be affected, while offering reasonable time period in which to file an appeal.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendments to Chapter 29 Code of Ordinances. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the North Miami Code of Ordinances entitled “Land Development Regulations”, by amending Article 3, Division 6, entitled “Variances Heard by Board of Adjustment,” specifically at Section 3-604 entitled “Administrative Variances”, and amending Division 7, entitled “Appeals”, specifically at Section

3-702 entitled "Administrative Appeals" to modify the requirements for obtaining an Administrative Variance and extend the time required for an aggrieved party to file a notice of appeal to the Board of Adjustment from the current ten (10) days to thirty (30) days.

CITY OF NORTH MIAMI CODE OF ORDINANCES
CHAPTER 29. LAND DEVELOPMENT REGULATIONS

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ARTICLE 3. DEVELOPMENT REVIEW

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DIVISION 6. VARIANCES HEARD BY BOARD OF ADJUSTMENT

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Sec. 3-604. Administrative variances.

A. Nonuse administrative variances may be granted by the ~~building and zoning~~ Community Planning & Development ~~d~~Department for applications under the following circumstances:

1. For single-family, duplex, triplex or townhouse project a variance to setback requirements where the setback is not decreased by more than twenty (20) percent of what is required in the applicable zoning district.
2. A variance for setbacks for docks not to exceed ten (10) percent of the required setback.
3. A parking variance for the first restaurant in a shopping center which existed on the date of adoption of these LDRs. If a parking variance is required for the second restaurant in an existing center, the board of adjustment shall consider the variance in accordance with the provisions of section 3-605.
4. For single-family, duplex, triplex, or townhouse lot, a variance to allow a driveway to maintain a side yard setback between two and one-half (2.5) feet and five (5) feet, provided that the driveway is composed of ~~previous~~ pervious or permeable materials.
5. A variance for the parking or storage of recreational vehicles pursuant to section 5-1405.
6. A variance for any carport structure within the required front and side setbacks pursuant to section 5-103.

B. The granting of an administrative variance shall be based on the following:

1. The variance is in harmony with the character of the immediate neighborhood and is in keeping with community goals as they relate to quality of life; and

2. The variance will not adversely affect or be injurious to the adjacent uses, immediate neighborhood and the community as a whole.

C. ~~The decision shall be transmitted by regular mail in writing to the adjacent property owners within five (5) working days of the decision being rendered.~~ Applications and signed consent of neighboring property owners; mailed notices.

1. The applicant must file a request to the Community Planning and Development Department, in a form approved by staff, containing all the information necessary for staff to make an administrative decision, which shall include, but is not limited to, identification of the specific provisions of this chapter from which a administrative variance is sought; the nature and extent of the variance; and the grounds relied upon to justify the approval of the variance, pursuant to subsection B.

2. Such application shall be accompanied by the required submittal documents and fee as determined by staff, which may include, but shall not be limited to, one of the following:

a. Signed consent of neighboring property owners.

- 1) The signed consent of all contiguous property owners, including those located across the street from the subject site, shall be submitted by the applicant on a form prescribed by the administrative official, and on the site plan submitted for consideration.
- 2) Said consent shall not be required when a separating public right-of-way measures 70 feet or greater, nor shall consent be required when a body of water completely separates the subject parcel from another parcel.
- 3) If the applicant for an administrative variance is unable to obtain either the signed consent or objection of a neighboring property owner, the signature of that owner shall not be required if the applicant demonstrates a good faith effort to comply with the requirements stated herein.

b. Mailed notices. The applicant shall provide written mailed notice of the request for administrative variance or waiver to the abutting property owners. Such notice shall be deemed sufficient if it accurately describes the adjustment requested, if it informs the abutting property owners of the consequences of a failure to respond within a specified time, and if such notice is sent first class mail, return receipt requested, to the property owners of record, as reflected on the county property appraiser's tax roll, as updated from time to time; and the applicant for the administrative variance shall present proof acceptable to staff that one of the following two events has occurred:

- 1) After 30 days from receipt of notice, as indicated on the return receipt, the neighboring property owner has failed to respond; or

- 2) The United States Postal Service has returned the notice as undeliverable.

D. A property owner receiving approval of an administrative variance shall not commence any of the improvements allowed by the administrative variance until after the expiration of time allowed for an appeal, in accordance with the provision of section 3-702.

Ø E. An administrative variance granted under these procedures shall be valid for six (6) months from the final date of approval, after which it shall become null and void unless a building permit is issued or a recreational vehicle (in the front yard) permit is granted or an extension is granted. The building and zoning department is authorized to grant one (1) six-month extension. Any further extension shall require the application to be resubmitted as an entirely new application.

È F. Appeals of decisions on an application for an administrative variance may be taken to the board of adjustment by an aggrieved party in accordance with the provisions of section 3-702.

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DIVISION 7. - APPEALS

Sec. 3-701. - Purpose and applicability.

The purpose of this division is to set forth procedures for appealing the decisions of city staff and the board of adjustment where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these LDRs.

Sec. 3-702. - Administrative appeals.

A. Zoning Appeals - An appeal from any zoning decision by the ~~director of building and zoning~~ Community Planning and Development Department or the development review committee where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these LDRs, shall be taken by an aggrieved party to the board of adjustment. An aggrieved party may file a notice of appeal to the board of adjustment with the ~~building and zoning director~~ Community Planning and Development Department within ten (10) days of the administrative decision-being-appealed. The notice of appeal should be accompanied by any relevant documents related to the appeal and applicable fees; as such said fees may be amended from time to time by Resolution of the city council.

B. Administrative Variances - An appeal to an administrative variance granted under section 3-604 shall be submitted to the Community Planning and Development Department by an aggrieved party. Said party may file a notice of appeal for consideration before the board of adjustment within thirty (30) days of the administrative decision. In addition to the regular application fee, the applicant property owner seeking the issuance of an administrative variance shall bear the cost of the applicable appeal fees.

C. Appeals to the board of adjustment shall require prior notice of the hearing in accordance with the provisions of article 3, division 3 of these LDRs.

Sec. 3-703. - Appeals from decisions of the board of adjustment.

Any person aggrieved by any decision or action taken under these LDRs by the board of adjustment may file a petition for writ of certiorari with the circuit court in accordance with the Florida Rules of Appellate Procedure within thirty (30) days of rendering of the decision.

Challenges to development orders based on consistency or inconsistency of the development order with the city comprehensive plan shall be governed by the provisions of F.S. § 163.3215.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. **Conflicts.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by _____ vote of the Mayor and City Council on first reading this _____ day of _____, 2015.

PASSED AND ADOPTED by _____ vote of the Mayor and City Council on second reading this _____ day of _____, 2015.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ROLAND C. GALDOS
INTERIM CITY ATTORNEY

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: _____

Seconded by: _____

Vote:

Mayor Dr. Smith Joseph, D.O., Pharm. D.
Vice Mayor Carol Keys, Esq.
Councilman Scott Galvin
Councilman Philippe Bien-Aime
Councilman Alix Desulme

_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.

The **Notional Interest Rate** and **Annual Percentage Yield (APY)** are accurate as of date of publication. The interest rate is good for 90 days from the date the account is opened. After 90 days, the interest rate will revert to the standard variable rate. The minimum balance to open the My Community Platinum Money Market Savings account is \$5,000. The My Community Platinum Money Market Savings account has no minimum required balance after opening. The promotion applies to those ties listed with daily balances of \$5,000 and above. The Annual Percentage Yields (APYs) are as follows: for daily balances between \$1,000-\$4,999.99, the APY is 0.01%; for daily balances between \$5,000-\$24,999.99, the APY is 0.41%; for daily balances between \$25,000-\$99,999.99, the APY is 0.64%; for daily balances between \$100,000-\$249,999.99, the APY is 0.64%; for daily balances \$500,000 and over, the APY is 0.64%. As required by regulation, the stated APYs are blended APYs that combine the introductory APY with the standard APY. The stated APYs apply to the entire balance of the account and are not subject to change without notice. The APYs are subject to change without notice or after account is opened. Fees may reduce earnings. There will be a fee if your account is closed within 180 days of opening. Please talk to a branch representative or ask us for our fee schedule for more details. Not available for business and non-profit accounts. Offer available through branches in state of Florida only. Offer may be withdrawn at the discretion of the bank at any time. The bank is not responsible for